

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	NO. CR04-334JCC
Plaintiff,)	ORDER GRANTING
)	GOVERNMENT'S MOTION TO
CONTINUE,)	
v.)	AND TO TAKE DEPOSITIONS
)	
KYLE GIANIS,)	(Proposed)
)	
Defendant.)	
_____)	

THIS MATTER comes before the Court on the United States' Motion to Continue the Trial Date and to Take Depositions pursuant to Fed. R. Crim. P. 15. The Court, having considered the motion, the opposition to, if any, and being otherwise fully advised, hereby finds and rules as follows:

1. Two essential witnesses to this prosecution, Adam Tsoukalas and David Youngberg, are Canadian citizens residing in British Columbia. As part of their own earlier prosecution, both witnesses indicated that defendant Kyle Gianis was the person who induced each man to bring a large quantity of ephedrine over the United States/Canadian border.

2. Neither witness is subject to this Court's subpoena power, and neither can be compelled to appear to testify at trial. Witness Youngberg has indicated he may appear in person to testify. To date, the government has been unable to definitively

1 determine whether witness Tsoukalas will voluntarily appear; however, at this time it
2 appears unlikely.

3 3. The Court finds that these witnesses possible unavailability at trial is an
4 exceptional circumstance that makes permitting a deposition in the interests of justice.

5 4. The Court further finds that the depositions of the witnesses cannot be
6 reasonably accomplished before the current trial date of March 24, 2008.

7 5. The Court further finds that the witnesses are essential, and unavailable
8 within the meaning of 18 U.S.C. §§ 3161(h)(3). The Court further finds that continuing
9 the trial to permit the deposition of both witnesses is in the interests of justice, and that
10 the interests of justice outweigh both defendant and the public's interest in a speedy trial.

11 NOW, THEREFORE, it is hereby

12 1. ORDERED that the United States' Motion to take depositions pursuant to
13 Rule 15 is GRANTED.

14 a. The United States is authorized to take video depositions in Canada
15 of David Youngberg and Adam Tsoukalas in this matter any time prior to May 23, 2008.

16 b. The United States will provide both the Court and defense counsel
17 reasonable prior notice to defense counsel of the time and place of the deposition.

18 c. The United States shall arrange with the United States Marshals for
19 the production and presence of Defendant at the Federal Courthouse so he may participate
20 in the deposition via videoconference.

21 d. Counsel for the government and defense shall be permitted to
22 conduct direct and cross-examination. Defense counsel may also bring support staff. The
23 Government may also have investigative agents present at the deposition.

24 e. The deposition shall be taken and filed in the manner provided in
25 Rule 15 of the Federal Rules of Criminal Procedure, provided that the scope and manner
26 of examination and cross-examination shall be such as would be allowed in the trial itself.
27 The Government shall make available to the defendant's counsel for examination and use
28 at the taking of the deposition any statement of the witness being deposed which is in the

possession of the Government and to which the defendant would be entitled at trial.

2. ORDERED that the government's motion to continue is hereby
GRANTED. Trial is continued to _____, 2008.

3. IT IS FURTHER ORDERED that pursuant to Title 18, United States Code,
Section 3161(h), the period of time from the current trial date to the new trial date is
excluded in the computation of time under the Speedy Trial Act as this is a reasonable
period of delay due to the unavailability of essential witnesses, and because the interests
of justice outweigh the defendant and public's interest in a speedy trial.

So Ordered this ____ day of _____, 2008.

THE HONORABLE JOHN C. COUGHENOUR
United States District Court Judge

Presented by:

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